

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DONALD WAYNE SMITH,)	
)	
Petitioner,)	
)	
vs.)	No. CIV-11-400-C
)	
ERIC FRANKLIN, Warden,)	
)	
Respondent.)	

ORDER ADOPTING REPORT AND RECOMMENDATION

This action for habeas corpus relief brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Valerie K. Couch consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Couch entered a Report and Recommendation on August 29, 2011, in which she recommended denial of the motion to dismiss but summary dismissal for failure to allege the denial of a cognizable constitutional right.

Petitioner timely filed an objection to these recommendations, along with a motion for leave to file an amended or supplemental pleading.* The Court therefore considers the matter de novo. First, the Court finds that leave to file an amended or supplemental pleading will be denied, as nothing alleged in the additional two grounds raised by Petitioner alleges the denial of a cognizable constitutional right, for the same reasons which apply to the other

* The motion for leave to amend is document no. 16, and the objection is an attachment thereto.

two grounds addressed by Judge Couch. Petitioner has simply alleged no argument of fact or law which was not fully considered and correctly resolved in the Report and Recommendation.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge, and for the reasons announced therein, the petition for habeas corpus is dismissed, as untimely. As no amendment can cure the defect, this dismissal acts as an adjudication on the merits, and a judgment will enter.

IT IS SO ORDERED this 16th day of September, 2011.



ROBIN J. CAUTHRON
United States District Judge